

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

JOHN McFERREN, JR., et al.,
Plaintiffs,

and

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,

v.

COUNTY BOARD OF EDUCATION OF
FAYETTE COUNTY, et al.,
Defendants.

CIVIL ACTION NO.: 2:65-cv-136

JOINT MOTION TO MODIFY CONSENT ORDER

COMES NOW Plaintiffs Class Representatives Vickie Shelton and Tracy Wade (the “Plaintiffs”), the Plaintiff-Intervenor United States of America (the “United States”), and the Defendant County Board of Education of Fayette County, Tennessee (the “District”) (collectively, the “Parties”) to jointly move for an order modifying the Court’s October 11, 2023, Consent Order, ECF No. 198 (“Consent Order”), to extend the monitoring and reporting period. The Parties respectfully request that the Consent Order be modified to state that the District may move for unitary status and dismissal of this case in the areas of student assignment and faculty assignment no earlier than two school years after its revised discipline policies, Gifted Plan, and Minority Recruiting, Hiring and Retention Plan go into effect.

In support of their Joint Motion, the Parties state as follows:

1. Under section I of the Consent Order, the District was required to produce its proposed revised Gifted Plan and discipline policies and procedures to the Plaintiffs and the

United States (collectively, “Plaintiff Parties”) for review no later than December 2023. The Consent Order required that the District “make every effort to implement the revised [discipline] policies during the first nine-week period of Spring semester of the 2023-24 school year.”

2. Under section II of the Consent Order, the District was required to produce its proposed Minority Recruiting, Hiring and Retention Plan to the Plaintiff Parties for review no later than February 2024.

3. Sections I and II of the Consent Order require the District to retain a third-party consultant to provide technical assistance and support in the development of these plans, and the District retained the Equity Assistance Center-South (“EAC”) for this purpose.

4. The District has been collaborating with EAC and working diligently to revise its policies and practices, but needs more time to finalize the revisions and implement its new policies than the Parties originally contemplated when negotiating the terms of the Consent Order.

5. The Parties continue to meet and confer regularly on draft versions of the Gifted Plan and the discipline policies and procedures and have collaborated to address deficiencies in those documents to ensure that the final versions comply with Consent Order requirements.

6. The District is working with EAC to prepare a Minority Recruiting, Hiring and Retention Plan that it will submit to the Plaintiff Parties for review by July 12, 2024.

7. Modification of the monitoring and reporting timelines in the Consent Order is needed to account for the additional time the District has needed to finalize its various plans. The Parties believe two school years of monitoring and reporting are necessary to allow the Plaintiff Parties and the Court to fully assess the District’s progress in implementing its revised policies and procedures.

8. The Parties request that the Court modify the first paragraph of Section V of the Consent Order to state: “The District will finalize all revisions to the Gifted Plan, its new discipline policies and procedures, and the Minority Recruiting, Hiring and Retention Plan, and complete all related training by no later than October 1, 2024, or file a joint status report to the Court explaining why implementation has been delayed. The District may move for unitary status and dismissal of this case no earlier than the end of the second school year after the revised policies are implemented, so long as the revised policies and related trainings are implemented by October 1 of the first year (*i.e.*, the District may move at the end of the 2025-2026 school year if the revised policies are implemented by October 1, 2024; but the District may not move for unitary status until the end of the 2026-2027 school year if the revised policies are implemented between October 2, 2024, and the end of the 2024-2025 school year). Prior to the District filing a motion for unitary status, the parties will confer to determine whether they can agree that the District can demonstrate that it has implemented in good faith a section or sections of this Consent Order for a reasonable period of time. In the event the parties cannot agree and the District intends to file a motion for declaration of full unitary status and dismissal of this case, the parties will ask the Court to adopt a scheduling order with a discovery period and other appropriate deadlines ahead of an evidentiary hearing.”

9. The Parties pray that the Court finds that they have shown good cause for this modification and that no party shall be prejudiced if the Court were to grant a modification to the Consent Order for the sole purpose of revising the date on which the District may move for unitary status.

10. Accordingly, for the reasons stated, the Parties respectfully request that the Court authorize modification of the October 11, 2023, Consent Order, ECF No. 198, for this

limited purpose.

Respectfully submitted this 3rd day of July 2024.

FOR PLAINTIFFS

/s/ Allison Scharfstein

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